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The leading case on the grant of easements is *Allen* v. *Gomme*.[7] A right of way was there granted "to the space or opening under the said loft now used as a woodhouse." It was held that the words "*now used as a woodhouse*" merely fixed the locality of the dominant tenement, but did not admit of the alteration of the loft and woodhouse into a cottage. Lord Denman said: "The defendant is confined to the use of the way to a place which should be in the same predicament as it was at the time of the making of the deed." The law as here laid down was later thought by Parke, B., in *Henning* v. *Burnet*,[8] to be too strict. He said: "If a general right of way is given to a cottage, the right is not altered by reason of the cottage being altered." *Finch* v. *Ry. Co.*[9] seems to express the present settled law in England in these words: "Where there is an express grant of a private right of way to a particular place, to the unrestricted use of which the grantee of the right of way is entitled, the grant is not to be restricted to access to the land for the purposes for which access would be required at the time of the grant." Some of the late English cases[10] seem to throw a doubt on this principle and to revert to the doctrine of *Allen* v. *Gomme*, but the distinguishing feature of these cases is that they are decided under the restrictive provisions of various Railroad Acts.

In America, the user to which a right of way could be put has always been liberally construed. In *Tallon* v. *Hoboken*,[11] the easement was granted to operate a steam railroad. The court decided that an electric railway could be operated under this. Gummere, J.,: "It is settled law that the owner of an easement in the land of another is not bound to use it in the particular manner prescribed by the instrument which creates it. He may use it in a different manner if he so desires, provided he does not, in doing so, increase the servitude nor change it, to the injury of the owner of the servient tenement." In another very recent case[12] it was said: "The grant was one defined in general terms and without express limitation. Such a grant is to be construed as broad enough to include any reasonable use to which the land may be devoted."

J. F. N.

LEGAL ETHICS—QUESTIONS AND ANSWERS—We publish herewith three more of the questions answered by the New York County Lawyers' Association Committee on Professional Ethics:

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[7] 11 Ad. & El. 758 (Eng., 1840).
[8] 8 Ex. 187 (Eng., 1852).
[9] L. R. 5 Ex. D. 254 (Eng., 1879).
[10] Great Western Ry. Co. v. Talbot, L. R. (1902) 2 Ch. 759; Taff Vale Railway Co. v. Gordon Canning, L. R. (1909) 2 Ch. 48; Reg. v. Brown, L. R. 2 Q. B. 630 (1867).
[11] Tallon v. Hoboken, 60 N. J. L. 212 (1897).
[12] Peck v. Mackowsky, 85 Conn. 190 (1912). Also see Randall v. Grant, 210 Mass. 302 (1911); Arnold v. Fee, 148 N. Y. 214 (1895).

QUESTION:

A lawyer who states that he has had great difficulty in securing testimony in behalf of his client from lawyers as to the value of legal services, in a litigation between the client and a former lawyer, involving that value, has applied to the Association to designate lawyers who will act as expert witnesses in his case. His application has suggested the formulation of the following question:

Is it the ethical duty of a lawyer, when called on to give testimony as an expert witness concerning the value of legal services, to testify as a witness giving his opinion of such value on a proper question submitted to him, in a litigation where it is charged that another lawyer has greatly overcharged the latter's client, or may any number of lawyers who are appealed to give testimony respecting the value of such services, the nature and extent of which are not in dispute, decline to testify on the ground that they do not care to express an opinion adverse to a charge made by another lawyer and which is in litigation?

ANSWER:

We are of the opinion that mere considerations of courtesy or fraternity should not deter members of the legal profession from testifying in respect to the value of legal services, when it is contended that a lawyer has overcharged or attempted to overcharge a client, and the controvery is the subject of litigation.

QUESTION:

Is it the opinion of the Committee that an attorney, who has received a retainer, but who has no express agreement with his client for his compensation, may properly notify his client, upon the eve of trial for which he has made preparation, that he will not appear at the trial, nor proceed further with the suit, nor consent to the substitution of another attorney, nor release any of the client's papers in his possession and essential to the proper trial of the action, unless his client pays or secures to his satisfaction the payment of a bill which he had rendered, and which he deems reasonable compensation for his services to the date of his conditional refusal to proceed further in the cause?

ANSWER:

The suggested conduct of an attorney upon the eve of the trial of the case for which he had been retained is unethical and should be condemned.

QUESTION:

"A," an attorney, represents two creditors of "C," and is desirous of filing a petition in bankruptcy against "C." "A" knows that "B," an attorney, represents a third creditor of "C," and suggests to "B" that "B" should have his client join with "A"'s clients in signing and filing the petition in bankruptcy.

This was done under an arrangement between "A" and "B" with the knowledge of the clients, that if "A" represents the receiver in bankruptcy, the fees which "A" thus receives will be divided between "A" and "B." Is this considered unethical?

I should like to have this question answered entirely irrespective of whether "B" is to do any work or not in connection with the receivership.

ANSWER:

The Committee does not express any view at present as to the propriety of an attorney for petitioning creditors assuming also to represent the receiver and thus sustain two-fold obligations that may conflict; yet, since in this district the Federal Court itself undertakes to safeguard by its special order under Rule 20 the propriety of such representation in each particular case, we are of the opinion that the facts recited in the question, do not alone constitute unethical conduct.